

To His Excellency GOVERNOR CLEVELAND,

PRESIDENT OF THE UNITED STATES.

SIR,

The attention of the American Atlantic and Pacific Ship Canal Company has been drawn to the answer by CHAS. P. DALY, Esq., Counsel for the Nicaragua Canal Association, to the "Protest of the American Atlantic and Pacific Ship Canal Company against the Bill to incorporate the Maritime Canal Company of Nicaragua." Believing that this document will be presented and urged upon your Excellency as a complete answer to the legal portion of the protest we recently had the honour to address to you, we again beg your Excellency's attention to this Reply to the assertions of Mr. CHARLES P. DALY on behalf of the Nicaragua Canal Association.

Mr. DALY pleads that (1st) The Government of Nicaragua did, in 1856, and had the right to, summarily annul the Charter of the American Atlantic and Pacific Ship Canal Company, and by summary decree to take away its property and privileges; and (2nd) That this Company by a Contract dated March 20th, 1861, renounced all the rights and interests it had acquired under its Charter Contract of 1849 and all subsequent Contracts.

Mr. DALY's assertions are so worded as to entirely confuse the issue, distort the facts, and present absolutely false conclusions.

Touching his first plea that the Government of Nicaragua did, in 1856, and had the right to.

annul the Charter of this Company, and by summary decree take away its property and privileges, Mr. DALY says, paragraph 7 of his statement :

“ On the 18th of February, 1856, the Government of Nicaragua revoked and annulled the grant it had made to the American Atlantic and Pacific Ship Canal Company on the 27th of August, 1849, and the modifications thereof made the 11th of April, 1850, and all the privileges therein contained. This decree also annulled and repealed the Act incorporating the said Company on the 9th of March, 1850, and also the Act incorporating the Accessory Transit Company of 14th August, 1851.”

The statements made in this paragraph *as to the promulgation* of these acts and decrees is true ; but on the 19th of June, 1857, a Convention embodying amendments and additions to the Contract of August 27th, 1849, was made and entered into by and between the Government of Nicaragua and the American Atlantic and Pacific Ship Canal Company, and also explanatory articles of 26th October same year (1857), were agreed upon between the State and the Company. We desire to call your Excellency's attention to the date of the above-mentioned Convention, and of the explanatory articles.

This Convention and Agreement entirely ignores the illegal and arbitrary acts of the Nicaraguan Government of 1856 in issuing its annulling decree. In this contract the Government of Nicaragua recognizes the validity of the contract of 1849 in all its bearings, to which contract this Convention and Agreement was to be considered in the light of an amendment and addition. This Convention and Agreement also recognizes the validity and existence of the agreements of the 11th April, 1850, March 9, 1850, and August 14th, 1851. In this Convention

and Agreement the Nicaraguan Government again proclaimed the exact method by which the relations between this Company and the Government were to terminate should it ever become necessary to terminate them. Article V. of this Contract of 1857 is as follows :—

“That in order to simplify and expedite the objects proposed in Articles XXXIII. and XXXIV. of the Contract of August 27th, 1849, whenever it may be necessary to appoint arbitrators to decide such disputes or controversies as may arise between the Government of Nicaragua and the Company, one arbitrator only shall be appointed by each party ; and in case of their disagreement, if the arbitrators do not within three days select a third arbitrator, application shall be made within ten days to the three oldest Ministers Plenipotentiaries, or Chargés d’Affaires, in default of Ministers resident, according to dates of reception in Washington, to select such third arbitrator, and the Minister or diplomatic representative of Nicaragua shall in no case be one of the three authorized to select. In case any one of these Ministers or Chargés d’Affaires shall excuse himself, or from any cause shall not be able to act, his place should be successively supplied by the next oldest Minister or Chargé d’Affaires, according to the order of reception in Washington, until the object is obtained. Persons interested in the Company, or the officers, agents, or employés thereof, cannot be appointed arbitrators, nor can the officers, agents, or employés of the Government of Nicaragua be so appointed.

“The arbitration shall take place in the City of New York.”

Although this Company has asked for and has always been, and is now, willing to have such Arbitration, and be bound by its decision, such Arbitration has never been held, the Government of Nicaragua returning no answer to the formal request of this Company. By the repeated Agreements and solemn Covenants entered into between the Government of Nicaragua and this Company, one method, and one method only, was and is open to the Government of that Republic by which to terminate the Contracts made with the American Atlantic and Pacific Ship Canal Company. That method the Government of Nicaragua has never

followed. It is, therefore, clearly established that the Contracts were never terminated, and that not having been terminated still remain in full and valid force.

Mr. Daly, with a carelessness that is so inexcusable that it is evidently wilful, ignoring the fact that—even if the Charter and rights were taken away in 1856 they were again alive and reconfirmed in 1857—advances the extraordinary doctrine that the Government of Nicaragua, having agreed and fixed by Contract and Statutes upon the method by which its relations with this Company were terminable, was fully empowered to adopt any other method it chose. In paragraph 10 Mr. Daly says :—

“ As the American Atlantic and Pacific Ship Canal Company was a Nicaraguan Corporation, this was a matter adjudicated and settled between the Corporation and the Government that created it. The Government of Nicaragua being an independent Government, had a right to repeal the Charter and annul the grant of a Company that had not fulfilled the conditions imposed by the grant in the Charter, and was necessarily sole judge whether the conditions had been broken and the franchises forfeited or not. It was not necessary for the Government to have any judicial investigation to have the forfeiture ascertained and declared, it being well settled as the law that a forfeiture is declared and a franchise gone when the Government repeals the Charter it granted, or even without that formality, transfers to others the right to carry out the same object.

“ Farnsworth *v.* Miss. and Pac. R.R. Co., 92. No. 66.”

“ Schulenburg *v.* Harrison, 21 Wall. 64 and 65.”

“ Davis *v.* Gray, 16 Wall. 222, 223.”

“ U.S. *v.* Rapontigny, 5 Wall, 211.”

The proposition of law advanced by Mr. Daly is applicable *when, and when only*, a contract contains no clauses that provide the method of its termination. When a contract has no clauses providing the method of its termination, then the rule of common law above cited by Mr. Daly, holds good. The contract between this Company and the Govern-

ment of Nicaragua provides a method, a very precise and special arbitration, which must be held and must decree the contracts terminated before they can be terminated lawfully. Therefore the common law principle cited by Mr. Daly, and the cases of "*Farnsworth v. Miss. and Pac. RR. Company* 92, 66; *Schulenburg v. Harrison*, 21 Wall, 64 and 65; *Davis v. Gray*, 16 Wall, 222, 223, and, *U.S. v. Rapontigny*, 5 Wall, 211," have absolutely no bearing whatever upon the relations, past or to come, that exist between the American Atlantic and Pacific Ship Canal Company, and the Government of the Republic of Nicaragua.

Mr. Daly's second plea is that the American Atlantic and Pacific Ship Canal Company, by a contract made with the Government of Nicaragua, on March 20, 1861, "did renounce all other rights and claims, including any rights to the canal route, or the construction of a ship canal." Mr. Daly bases this assertion upon the following Article XXI. of that contract of March 20, 1861 :—

"Both parties to the present contract renounce in the most absolute and binding manner, the one in favour of the other, whatever rights or interests they may believe themselves to have acquired by virtue of the Contract celebrated between them on the 27th day of August, 1849, which was modified by the Convention of the 9th of March, 1850, or of the Agreement ratified on the 20th of August, 1851, or by virtue of the Law of Incorporation of that date, or of the Contract of the 19th of June, 1857, or of the Declaratory Articles of the 26th of October of the same year, or of any other Contract whatever which, prior to this date, may have been celebrated between the parties; all of which are null and of no value nor effect. And the said parties likewise renounce and abandon for ever all claim, pretention, or demand to which they may believe themselves to be entitled, the one against the other, for damages, injuries, recompense, or indemnification, or for any other consideration whatever. And it is understood that among the rights and interests renounced and abandoned, as aforesaid, are included whatever

rights, real or personal, the said American Atlantic and Pacific Ship Canal Company may believe that it has to, or in lands or other real property whatever situated in the Republic of Nicaragua."

Mr. Daly, in his attempt to make a case at all hazards, uses only such portions of these various Contracts as please him, and has attempted to distort the clear meaning and the purpose of Clause XXI. It was agreed and understood at the time by the Counsel of the Government and the Company, that Clause XXI. withdrew the authority heretofore held by the Company to act as a colonization Society in accordance with Article XXVII. of the primary Contract of 1849: Nicaragua feared that the lands along the river San Juan would be colonized by men who would defy her authority. See Articles VI. and VII. of Contract, June, 1857.

Article XXI. in enumerating the various Contracts, some of the provisions of which it was agreed to renounce, specifically omitted the "Act of Incorporation of the American Atlantic and Pacific Ship Canal Company of 19th June, 1850," because Article XXVII. specially reserves the Canal rights to this Company. Article XXVII. provides as follows:—

"If the Government should be a party to any Contract or Convention which now exists for the construction of a Maritime Canal across its territory; and the duration of the rights and privileges stipulated for in the present Contract shall be incompatible with the terms and conditions of said Contract or Convention; in such case the rights and privileges stipulated for in the present Contract shall only last until the complete execution of the work of the Maritime Canal, according to the terms and condition of the said Contract or Convention."

This language shows very clearly that it was understood by the lawyers advising the Nicaraguan Government that the canal rights of the Company

had survived the mutations which had overtaken their contract in other respects. The letter of the Nicaraguan Minister, Mr. Yrisarri's, gives similar evidence. It is therefore clear that the right to build the canal granted by the Contract of 1849 was not abrogated by the Contract of 1861.

This Contract of March 20, 1861, was the last official act celebrated between this Company and the Republic of Nicaragua, as on that day, the Government of Nicaragua declared by contract all this Company's rights to the route and to build a ship canal to be in full force and effect, and has never taken the only method possible to cause these rights to cease and determine. It is certainly a true statement both of fact and law, to assert that the American Atlantic and Pacific Ship Canal Company is at this moment in complete legal possession of all its rights to build an inter-oceanic canal across the territory of the Republic of Nicaragua.

Mr. Chas. P. Daly "of Counsel" asserts that the rights of this Company were taken away in 1856; we have shown that Nicaragua recognized them as in unimpaired existence in 1857. Mr. Daly asserts Nicaragua has the right to take away the privileges of this Company by summary decree; we have demonstrated that Nicaragua has no such power. Mr. Daly asserts that we renounced all our rights to the canal route, and to construct a ship canal on March 20th, 1861. We have shown that instead of renouncing them, we on that day had them specifically and expressly re-affirmed and recognized, and reserved to this Company by contracts with the



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Government of Nicaragua. And we respectfully submit to Your Excellency that all this we have abundantly testified.

Mr. Daly says in paragraph 20 of this false and stupid opinion :—

“Finally, as respects the statement in the protest, that the Company has expended large sums of money on the preliminary works of construction, that they have recently let large Contracts to responsible Contractors, that they have issued Mortgage Bonds for 100,000,000 dols., which are a first lien on the Canal, and that the Canal will be completed in three years if they are not hindered : these statements are entitled to about as much weight and consideration as the statement that there is any such Corporation now in existence.”

The American Atlantic and Pacific Ship Canal Company is quite willing to have attached to these statements “as much weight and consideration” as to the statement that this Company is “now not in existence.” When Counsel are willing to support their position by carefully omitting the very facts which overthrow their position, by falsely asserting cases to prove what these cases do not prove, by suppressing clauses that nullify the clauses they quote, it is hardly necessary for this Company to invite disbelief in this kind of Counsel’s statements, which they do not even attempt to bolster by garbled documents and partial truths.

All of which is respectfully submitted.

We have the honour to be, with respect,

Your Excellency’s most obedient Servants,

THE AMERICAN ATLANTIC AND
PACIFIC SHIP CANAL COMPANY,

By

A. L. BLACKMAN,

President.

New York, *March 21st*, 1888.